



**BILLING CODE: 5001-06**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 505**

**[USA-2016-HQ-0030]**

**Army Privacy Program**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of the Army is amending the Army Privacy Program Regulation. Specifically, Army is adding exemption rules for Army system of records "A0600-20 SAMR, Soldiers Equal Opportunity Investigative Files". This rule provides policies and procedures for the Army's implementation of the Privacy Act of 1974, as amended. This direct final rule makes changes to the Department of the Army's Privacy Program rule. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of the Department of Defense's (DoD's) program by preserving the exempt status of the records when the purposes underlying the exemption are valid and necessary to protect the contents of the records.

**DATES:** The rule will be effective on [INSERT DATE 70 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] unless comments are received that would result in a contrary determination. Comments will be accepted on or

before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy C. Rogers, Chief, FOIA/PA, telephone: 703-428-7499.

**SUPPLEMENTARY INFORMATION:**

**Direct Final Rule and Significant Adverse Comments**

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse

comment, the Department will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's Privacy Program to ensure that policies and procedures are known to the public.

#### **REGULATORY PROCEDURES:**

##### **Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined this Privacy Act rule is not a significant rule. This rule does not (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or

safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C Chapter 6)**

It has been determined that this Privacy Act rule for the DoD does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act within the DoD.

**Public Law 95-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined that this Privacy Act rule for the DoD imposes no information collection requirements on the public under the Paperwork Reduction Act of 1995.

**Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”**

It has been determined that this Privacy Act rulemaking for the DoD does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, “Federalism”**

It has been determined that the Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **List of Subjects in 32 CFR Part 505**

Privacy.

Accordingly 32 CFR part 505 is amended as follows:

#### **PART 505—ARMY PRIVACY ACT PROGRAM**

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Amend appendix D to part 505 by adding paragraph (g)(35) to read as follows:

#### **Appendix D to Part 505—Exemptions, Exceptions, and DoD Blanket Routine Uses**

\* \* \* \* \*

(g) \* \* \*

(35) System identifier: A0600-20 SAMR.

(i) System name: Soldiers Equal Opportunity Investigative Files.

(ii) Exemptions: Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), is exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal

law or for which he would otherwise be eligible, as a result of the maintenance of such information, such material shall be provided to the individual, except to the extent that disclosure would reveal the identity of a confidential source.

Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(iii) Authority: 5 U.S.C. 552a(k)(2).

(iv) Reasons: (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or other investigation conducted for law enforcement purposes to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to such records contained in this system would inform the subject of a criminal investigation or other investigation conducted for law enforcement purposes, of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations or other law enforcement investigations, information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained because it can aid in

establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because the requirements in those subsections are inapplicable to the extent that portions of this system of records may be exempted from subsection (d), concerning individual access.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(G) For records that are copies of exempt records from external systems of records, such records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record that is now contained in this system of records. In general, the exemptions were claimed to properly protect classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided to the President and others are not compromised; to protect records used solely as statistical records; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality

and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when provided by a confidential source. The exemption rule for the original records will identify the specific reasons the records are exempt from specific provisions of 5 U.S.C. 552a.

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Dated: August 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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